

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

**UNITED STATES OF AMERICA and
PEOPLE OF THE VIRGIN ISLANDS,**

Plaintiffs,

v.

FRANKLIN XAVIER,

Defendant.

2008-CR-0018-01

**TO: Allan F. John-Baptiste, Esq., AUSA
Amelia B. Joseph, Esq.**

**ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OF
DETENTION**

THIS MATTER came before the Court for consideration upon Defendant Franklin Xavier's *pro se* Motion For a Bail Hearing (Docket No. 42). A hearing was held on November 10, 2008. The government was represented by Allan F. Baptiste, Esq., AUSA; and Amelia B. Joseph, Esq., appeared on behalf of said Defendant.

In support of his motion, said Defendant presented the testimony of Stanford Xavier and Rosa Xavier. Mr. and Mrs. Xavier stated that Defendant is their son and that they live at 63 Upper Love, where Defendant also resides. Mr. and Mrs. Xavier also stated that they were willing to act as Defendant's third-party custodians.

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Said Defendant also presented the testimony of Albert Xavier, said Defendant's brother, who testified that he would give said Defendant a job as a carpenter assistant on a construction job that he currently is working.

I. Authorization for Detention Hearing

18 U.S.C. § 3142(f) allows such hearing in a case where the Defendant is charged with "a crime of violence . . . for which a maximum term of imprisonment of 10 years of more is prescribed" or "any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm . . ." Defendant is charged with felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), and unauthorized possession of a firearm in violation of V.I. Code Ann. tit. 14 §§ 2253(a) and 11(a).

II. Consideration of Detention

Title 18 U.S.C. § 3142(e) authorizes the Court to detain a defendant unless the Court finds that there exists a "condition or combination of conditions [that] will reasonably assure the appearance of the person as required and the safety of any other person and the community." Section 3142(g) enumerates factors to be considered:

(1) whether the offense is a crime of violence or involves a narcotic drug;

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(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including whether, at the time of the current offense or arrest, defendant was on probation, or parole from a prior offense;

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release.

Based upon the previous testimony provided at said Defendant's detention hearing on June 5, 2008, the evidence against Defendant is strong. Defendant is a convicted felon and firearms were recovered during the execution of a search warrant on his residence. Moreover, the underlying incident occurred while Defendant was on supervised release after serving a ten (10)-year imprisonment sentence.

Said Defendant has produced no new evidence to cause the Court to reconsider its earlier finding in its order dated June 6, 2008, and amended order dated June 10, 2008, that said Defendant's propensity for violence based upon the facts elicited during the detention hearing and upon his prior criminal record compels the conclusion that said Defendant poses a danger to the community and that there currently are no conditions of release which would reasonably assure the safety of other persons and the community.

Now therefore, it is hereby **ORDERED** that Defendant Franklin Xavier's motion for reconsideration of the detention of said Defendant is **DENIED**.

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ENTER:

Dated: November 10, 2008

_____/s/
GEORGE W. CANNON, JR.
U.S. MAGISTRATE JUDGE